IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE EIGHTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 15889 of 2004

Between:

1 The Union of India, rep.by Secretary, Ministry of Defence,

Government of India, New Delhi.
2 The Chief of the Naval Staff, Naval Headquarters, New Delhi.
3 The Flag officer Commanding-in-chief, Headquarters,

Eastern Naval Command, Visakhapatnam.

..... PETITIONERS

AND

Shri Bishnu Charan Choudhury, Civilian Education Instructor, INHS Kalyani, Visakhapatnam.

...RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction, calling for the records, pertaining to OA 901 of 2002 dated 25 Mar 2004 on the file of Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void, ab initio, null and void and nonest in the eye of law and pass such other and further order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioners: MR.ARAJASHEKAR REDDY (SC FOR CG)
Counsel for the Respondent: Mrs. Anita Swain

The Court made the following:

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ORAL ORDER:- **(PER PSN,J)**

The Union of India and others as Writ Petitioners filed the present Writ Petition for issuance of a Writ of Certiorari or any other appropriate writ, order or direction, calling for the records, pertaining to O.A.No.901 of 2002, dated 25.03.2004 on the file of the Central Administrative Tribunal, Hyderabad (hereinafter in short referred to as "the Tribunal") and quash the same as illegal, arbitrary, contrary to law and unconstitutional and declare the same as void ab initio, null and void and non est in the eye of law.

2. The respondent herein filed the aforesaid O.A. on the file of the Tribunal praying for a direction to maintain his service documents in accordance with his transfer order, dated 17.12.1992, allowed by the Central Administrative Tribunal, Cuttak Bench, and to take necessary steps to grant his financial upgradation under A.C.P. from August, 1999 and to promote him to C.E.I.-I (Rs.6500-10,500) from August, 2002, by setting aside the decision taken up by DPC and Departmental Screening Committee (DSC).

3. The Government of India implemented the financial upgradation under Assured Career Progression (ACP) for their employees, upon completion of 12 years of service in the same post.

4. The case of the respondent is that the cadre controlling authority of the respondent in the Writ Petition, on the ground of mala fides and bias, submitted

improper ACRs of him without corroborating his service documents and suppressed relevant letters to the Departmental Screening Committee of A.C.P. for which his case had not been recommended for financial upgradation by the committee. It is also the grievance of the respondent-applicant that employees junior to him were granted financial upgradation and on respondent-applicant putting the query to see no reasons had been assigned for not recommending his case and being aggrieved of the same he had approached the Tribunal.

5. Apart from the ground of malafides and bias specific ground was taken that at no point of time he was put on notice and hence no opportunity in this regard also had been given. Several allegations relating to the remarks also had been averred in detail. The Tribunal, after elaborate discussion of the pleadings of the respective parties, ultimately allowed the O.A. with certain directions, without costs. Aggrieved by the same, the present Writ Petition had been filed.

6. Learned senior standing counsel for the Central Government had taken this Court through the findings recorded by the Tribunal and had contended that the observations made by the Tribunal relating to vindictiveness and other similar grounds cannot be sustained. The learned counsel also further contended that at any rate the respondent-applicant need not be put on notice relating to these remarks. The view expressed by the Tribunal while issuing the directions to review the case of the respondent-applicant for financial upgradation under ACP scheme or for promotion excluding the ACRs from 1993-94 up to 2000-01, especially in the light of the remarks which had been recorded therein cannot be sustained.

7. The same had been opposed by the learned counsel representing the respondent. The learned counsel for the respondent also brought to the notice of this Court the findings recorded by the Tribunal in general and at Para Nos. 24 and 25 in particular.

8. Heard the learned counsel.

9. The Tribunal, after considering the respective pleadings of the parties, commencing from Para Nos.21 to 25, recorded the reasons. It is no doubt true that as far as the finding relating to the vindictiveness or the biasness which had been recorded right from the year 1992-1999, is concerned, this cannot be very pertinent, but however, in the light of the other reasons which had been recorded in detail, this Court is of the considered opinion that the directions issued by the Tribunal cannot be found fault. It may be appropriate to have a look at the findings recorded by the Tribunal at Para Nos.24 and 25, which are as hereunder:

> " After going through the minutes of the departmental screening committee, produced before us by the respondents, we find that the applicant has been graded 'average' all through from 1995-96 upto 1999-2000. Overall assessment has also been graded as 'average' and the concluding remarks are 'unfit' for selection. In certain years, the applicant has been graded even 'below average', but none of the 'average' remarks were ever communicated to the applicant except for the period 1998-99 and that too after more than 2 years. As per the various decisions of Hon'ble Supreme Court, especially in the case of U.P. Jal Nigam Vs. S.C. Atri & another (1998 SCC (L&S) 1733) it was clearly observed by their Lordships that in case of 'average' grading or expunction of adverse entry given to the petitioner which comes in the way of his promotion, the same shall be duly communicated to the petitioner or else the grading should not be counted for the purpose of DPC. Since this principle has not been followed by the respondents in the case of the present applicant, we hold that the ACRs of the applicant recorded from 1993 onwards till 2000-01 having either 'average' grading or 'below average' grading and not communicated to the applicant within the time limit, shall not be taken into account for the purpose of consideration of his case for financial upgradation under Assured Career Progression Scheme (ACP) or for his promotion.
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> The respondents are accordingly directed to review the case of the applicant for financial upgradation under ACP Scheme or for promotion, excluding the ACRs from 1993-94 upto 2000-01. The said review DPC/DSC be held within a period of three months from the date of communication of this order.
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> The O.A. is allowed with the above directions with no order as to costs."

10. In the light of the reasons, which had been recorded by the Tribunal as, referred to supra, this Court is of the opinion that the said findings need not be disturbed and

accordingly they are hereby confirmed.

11. Accordingly, the Writ Petition is hereby dismissed as being devoid of merit. No order as to costs.

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G. BIKSHAPATHY, J.

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P.S. NARAYANA, J.

Date: 08.02.2005

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To

1 The Secretary, Union of India, Ministry of Defence,

Government of India, New Delhi.
2 The Chief of the Naval Staff, Naval Headquarters, New Delhi.
3 The Flag officer Commanding-in-chief, Headquarters,

Eastern Naval Command, Visakhapatnam.

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